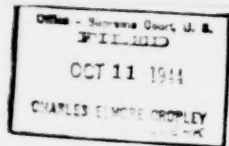


IN THE SUPREME COURT
OF THE UNITED STATES



ANNIE MAE BRADLEY, Petitioner)
)
 vs.)
)
 LENA M. BRADLEY and UNITED)
 STATES OF AMERICA, Respondents)

PETITION FOR WRIT
OF CERTIORARI
CIVIL CAUSE NO. 586

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Comes now Annie Mae Bradley, widow, as petitioner herein, complaining of Lena M. Bradley and the United States of America, respondents herein, and makes and files this her petition in this court for a writ of certiorari to issue to the United States Circuit Court of Appeals for the Tenth Circuit whereby cause therein numbered 2886 and styled Lena M. Bradley, appellant, vs. United States of America and Annie Mae Bradley, appellees, and the adverse judgment therein to petitioner herein dated May 30, 1944, and made final therein by order of said Circuit Court dated July 21, 1944, denying the petition of Annie Mae Bradley to reopen the judgment in said cause, is desired to be removed to the Supreme Court of the United States by said writ of certiorari to review the errors committed by said Circuit Court in rendering judgment denying to petitioner, Annie Mae Bradley, an affirmance of the judgment of the trial court which granted her the recovery of the proceeds of a policy of National Service Life Insurance upon the life of her husband, Eugene M. Bradley.

The United States of America is made respondent herein for the sole purpose of the payment of the proceeds of the said policy of insurance depending upon whether a decision upon this petition for certiorari has the effect to require the payment of said proceeds to either petitioner or to Lena M. Bradley, one of the respondents herein.

GROUND OF JURISDICTION

(1) The Supreme Court of the United States has and should take jurisdiction upon the ground that the decision of the Circuit Court of Appeals for the Tenth Circuit in this case is in conflict with the decision on the same matter made by another Circuit Court of Appeals, to-wit the Sixth Circuit Court of Appeals in KASCHEFSKY VS. KASCHEFSKY, 110 FED. 2ND 836, for this: That the said Sixth Circuit Court in said case held the soldier's verbal declarations of intention to make change of beneficiary of his government insurance, together with several letters written to his sister, to the effect that he desired all his sisters and brothers, instead of the one brother originally named as beneficiary, to be equal beneficiaries of his insurance, were legally sufficient to effect a change of beneficiary: whereas the majority decision of the said Tenth Circuit Court in this case is that the insured's expressions of intention made to his wife and to his fellow flyers to change the beneficiary of his insurance from his mother to his wife, when carried out by no more than his signing and designating his wife as the beneficiary of said insurance in a Confidential Personal Report which was required of him by his superior officers, was not an effectuation of his said expressed

intention and did not legally effect a change of beneficiary of his insurance.

(2) The Supreme Court of the United States has and should take jurisdiction herein upon the ground that the said Circuit Court of Appeals for the Tenth Circuit by a divided opinion has decided an important question of federal law which has not been, but should be, settled by the Supreme Court of the United States. The majority opinion in this case will probably give rise to much insurance litigation which otherwise would be thought to be settled by the decisions cited herein; hence, the question should be settled by this court.

The question decided by said Circuit Court in this case is stated under first ground of jurisdiction.

Said question has been decided differently on analogous facts in these cases: by the Circuit Court of Appeals for the Seventh Circuit in STEELE VS. SUWALSKI, 75 FED. 2ND 885; by the District Judge in UNITED STATES VS. TUEBERT, D. C., N. Y., 57 FED. 2ND 895; by the District Judge in CLAFFY VS. FOREES, D. C., WASH., 280 FED. 233; and said majority opinion in this case conflicts in principle with the principles laid down and followed in the following cases:

JOHNSON VS. WHITE, EIGHTH CIRCUIT, 39 FED. 793, at page 796, reading:

"The intention, desire, and purpose of this soldier should, if it can reasonably be done, be given effect by the courts, and substance, rather than form, should be the basis of the decisions of

courts of equity. The clearly expressed intention and purpose of the deceased to have his wife named as the beneficiary in this insurance should control, and should not be thwarted by the fact that all the formalities for making this purpose effective may not have been complied with."

UNITED STATES VS. MALLERY, SECOND CIRCUIT, 48 FED.

2ND 6.

AMROSE VS. UNITED STATES, DISTRICT JUDGE, 15 FED.

2ND 52.

SCHROEDER VS. UNITED STATES, DISTRICT JUDGE, SO. D.

OHIO, 24 FED. 2ND 420.

PETITIONER'S ASSIGNMENT
OF ERROR

The said Circuit Court of Appeals erred in holding that the insured's orally expressed intention to change the beneficiary of his insurance from his mother to his wife was not effectuated by the designation by insured in the "Confidential Personal Report," signed by him, and in which he designated his wife as the beneficiary of said insurance.

PETITIONER'S BRIEF IN SUPPORT
OF PETITION FOR CERTIORARI

The majority opinion of the Circuit Court of Appeals, whose judgment is here sought to be reviewed, discloses that there was issued to insured a policy of National Service Life Insurance in the sum of Ten Thousand (\$10,000.00) Dollars in which his mother, Lena M. Bradley, was named as the beneficiary.

That thereafter, insured married, and that as a member of the Air Force he, accompanied by his wife, petitioner here, reported at Windsor Locks, Connecticut, and two days later executed the instrument called "Confidential Personal Report." Said report reads as follows:

"CONFIDENTIAL PERSONAL REPORT

U. S. ARMY AIRPORT
Windsor Locks, Connecticut,
Aug 20 1941.

Bradley	Eugene	M.	2d Lt.	A.C.
<u>Last Name</u>	<u>First</u>	<u>Middle</u>	<u>Rank</u>	<u>Arm</u>
Home Address <u>1080 Poquonock Ave.. Windsor Conn.</u>				
Notify in an Emergency <u>Ann Bradley</u>			<u>Wife</u>	<u>1080 Poquonock Ave Windsor Conn.</u>
		<u>Name</u>	<u>Relationship</u>	<u>Complete Address</u>
Single <u> </u>	Married <u>X</u>	<u>Wife's Given Name</u>		<u>Ann M.</u>
Children <u>None</u>				
		<u>Name</u>	<u>Age</u>	<u>Sex</u>
		<u>Ann M.</u>		
Government Insurance <u>Yes</u>		Amount <u>\$10,000</u>	Type <u>Gov't</u>	Beneficiary <u>Bradley</u>
Location of Policies, Will or other Important Papers				<u>with Wife</u>
Religion		<u>Methodist</u>		
Signature		<u>Eugene M. Bradley</u>		

Said majority opinion further recites that insured's wife, petitioner, testified that he discussed the matter of changing the beneficiary of his policy from his mother to her and that he told her "he had taken care of the insurance at the Army base." Said majority opinion further recites that according to affidavits of a number of his comrades, the insured on numerous occasions dis-

cussed with them his intention to change the beneficiary of his insurance from his mother to his wife, and sought and obtained advice from them concerning the method of doing so and expressed his intention to do so.'

Said Report names insured's wife as the custodian of his policy and other papers. Insured lost his life in a plane crash the next day after executing and filing with the air base adjutant said "Confidential Personal Report."

The insured's statement to his wife that he "must attend to this tomorrow" and on the following day his statement to his wife that "he had taken care of the insurance at the Army base," together with the physical act of writing in on said "Confidential Personal Report" the name of his wife as the beneficiary of his said insurance and signing same, are acts in effectuation of the soldier's expressed intention to make the change of beneficiary of his insurance from his mother to his wife. Those acts should be given effect upon the principle thus stated in KASCHEFSKY VS. KASCHEFSKY, Supra, reading:

"Form, formality and legal technicality must give way to common sense and remedial justice, when all doubt is removed as to the intent of the deceased soldier; and when the purpose of the law has been complied with, there should be no hesitation in carrying out the express wish of such deceased *****."

Petitioner is giving notice of the filing of this petition for certiorari by forwarding a copy hereof to each of the follow-

cussed with them his intention to change the beneficiary of his insurance from his mother to his wife, and sought and obtained advice from them concerning the method of doing so and expressed his intention to do so.

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"Form, formality and legal technicality must give way to common sense and remedial justice, when all doubt is removed as to the intent of the deceased soldier; and when the purpose of the law has been complied with, there should be no hesitation in carrying out the express wish of such deceased *****."

Petitioner is giving notice of the filing of this petition for certiorari by forwarding a copy hereof to each of the follow-

ing named persons, to-wit:

1. F. L. Welch, attorney for respondent, Lena M. Bradley, Antlers, Oklahoma.
2. Lester T. Schoene, Director, Bureau of War Risk Litigation, Department of Justice, Washington, D. C.
3. Cleon A. Summers, United States Attorney, Muskogee, Oklahoma.
4. Charles L. Chalender, Bureau of War Risk Litigation, Springfield, Missouri.

WHEREFORE, Annie Mae Bradley, in her own proper person filing this petition for certiorari, prays that the Supreme Court of the United States grant a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit requiring it to transmit the record of the proceedings of cause No. 2886 entitled Lena M. Bradley, appellant, vs. United States of America and Annie Mae Bradley, appellees, to this court in order that the said cause and the judgment of the said Circuit Court may be reviewed by this court. And petitioner prays that on such review this court reverse the judgment of the said Circuit Court of Appeals in this case insofar as the said judgment reverses the judgment of the trial court decreeing petitioner to be the legal beneficiary of the insurance herein involved, and that this court by its judgment in all things affirm the judgment of the trial court in this case save and except that part of its judgment in respect of the payment of attorney's fees herein. And your petitioner

further prays that she have at the hands of this court all relief, general and special, at law or in equity, to which she may be rightly entitled. And petitioner further prays that as to any costs incurred in this court, it be the order of this court that her affidavit of inability to pay costs, signed herein coincident with the filing of this petition for certiorari, be accepted and such costs ordered not adjudged against her.

Annie Mae Bradley
Annie Mae Bradley, c/o Andrew Dilworth
407-11 National Bank of Commerce Bldg.
San Antonio 5, Texas



The first part of the paper
discusses the importance of
the study of the history of
the world. It is a very
interesting and useful
subject. The second part
of the paper discusses the
importance of the study of
the history of the United
States. It is a very
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subject. The third part
of the paper discusses the
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It is a very interesting
and useful subject.

(9)

No. 586

Office - Supreme Court, U. S.
FILED
OCT 31 1944
CHARLES ELMORE DROPLEY
CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1944

ANNIE MAE BRADLEY,
Petitioner,

vs.

LENA M. BRADLEY AND UNITED STATES OF AMERICA,
Respondents

**ON PETITION FOR CERTIORARI TO CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT**

Response and Brief Opposing Grant of Writ

F. L. WELCH,
Antlers, Oklahoma.

EDWARD M. BOX,
Cotton Exchange Bldg.,
Oklahoma City, Oklahoma.

*Attorneys for the Respondent,
Lena M. Bradley.*

October 28, 1944.



In The
SUPREME COURT OF THE UNITED STATES
October Term, 1944

No.

ANNIE MAE BRADLEY,
Petitioner,

VS.

LENA M. BRADLEY AND UNITED STATES OF AMERICA,
Respondents

**ON PETITION FOR CERTIORARI TO CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT**

Response and Brief Opposing Grant of Writ

I.

**The Petition for Certiorari Was Not Filed
Within Time.**

The Statute (28 U.S.C.A. 350), provides:

"No * * * writ of certiorari, intended to bring
any judgment or decree before the Supreme Court
for review shall be allowed or entertained unless

(2)

application therefor be duly made within three months after the entry of such judgment or decree. * * *

The opinion, judgment and decree of the Circuit Court of Appeals was filed May 30, 1944.

Within 30 days thereafter, petition for re-hearing was filed in the Circuit Court of Appeals in accordance with Rule 24 of said Court. Said petition for re-hearing and request to argue such petition were denied July 5, 1944.

Thereafter petitioner herein for certiorari filed in the Circuit Court of Appeals (without obtaining permission of the Court) her petition to reopen said case (a proceeding and petition not authorized by law or Court rule so far as we are able to ascertain), and said petition to re-open was denied by the Circuit Court of Appeals July 21, 1944.

No stay of Mandate by the Circuit of Appeals was ever requested by petitioner herein for certiorari, pending application to the Supreme Court for certiorari as provided by Rule 28 of the Circuit Court of Appeals.

The Circuit Court of Appeals on July 28, 1944, issued its mandate in said case to the United States District Court for the Eastern District of Oklahoma, the trial Court.

The rule is that the three months begin to run in case petition for re-hearing is timely filed, from the denial of the petition for re-hearing.

(3)

Citizens Bank of Michigan City, Ind. v. Opperman, 39 S. Ct. 330, 249 U.S. 448, 63 L. Ed. 701;

Gypsy Oil Co. v. Escoe, 48 S. Ct. 112, 275 U.S. 498, 72 L. Ed. 393.

The petition for re-hearing having been overruled and denied on July 5, 1944, the three months time to apply for certiorari began on that date and expired with October 5, 1944.

The filing of the unauthorized petition to re-open the case (without permission of the Circuit Court of Appeals) does not operate to suspend the running of the three months period. Same did not ask for "re-hearing" but was a request to "re-open" the case.

Department of Banking, State of Nebraska, etc. v. Pink, 63 S. Ct. 233, 317 U. S. 264, 87 L. Ed. 254.

The petition for writ of certiorari was not mailed from Houston, Texas, until October 10, 1944, the copy of same served on counsel filing this response and brief was received October 12, 1944.

Therefore, since the application for certiorari herein was not made within the three months allowed, it was not within time and should be dismissed and denied.

(4)

II.

The Petition For Certiorari Should Be Denied On The Merits.

The question involved in this case was whether a flying officer in the U. S. Army, had sufficiently and legally changed the beneficiary of his National Service Life Insurance from his mother to his wife.

The applicable regulation governing the right to change the beneficiary, as promulgated by the Administrator in pursuance of his statutory authority, 54 Stat. 1012, 38 U.S.C.A. 808, provides:

"* * * a change of beneficiary to be effective must be made by notice in writing signed by the insured, and forwarded to the Veterans' Administration by the insured or his agent. * * *"

As pointed out in the opinion of the Circuit Court of Appeals the soldier had signed a certain "Confidential Personal Report" required of all flying officers, the declared purpose of which was to compile and maintain accurate personal records of all officers of the Air Corps. This form was filled in pursuant to War Department order requiring same. It was filed with the Soldier's commanding officers, and after the soldier's death it was forwarded by such commanding officers to the Veterans' Administration at its request. This form contained a statement indicating the insured thought his wife was beneficiary.

The only other evidence of change of beneficiary (over our objection) were oral statements made by the

(5)

wife, who claimed the proceeds of the policy by virtue of the purported change of beneficiary, to the effect that insured told her that "he had taken care of the insurance at the Army base."

The decision of the Circuit Court of Appeals was that this was not sufficient to amount to change of beneficiary.

The decision of the Circuit Court of Appeals goes clearly into each and all of the authorities relied on by the petitioner herein; clearly demonstrates the authorities relied on by petitioner are inapplicable to the facts in this case.

As disclosed by the opinion of the Circuit Court of Appeals, there is a clear distinction between this and the case of *Kaschefskey v. Kaschefskey*, 110 Fed. (2d) 836 (Sixth Circuit Court of Appeals), and there is no conflict between the decision in this case and that in the *Kaschefskey* case.

The petition for certiorari herein should therefore be denied also upon the merits.

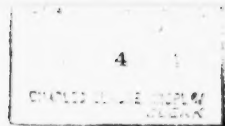
Respectfully submitted,

F. L. WELCH,
Antlers, Oklahoma.

EDWARD M. BOX,
Cotton Exchange Bldg.,
Oklahoma City, Oklahoma.

*Attorneys for the Respondent,
Lena M. Bradley.*

October 28, 1944.



No. 586

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

ANNIE MAX BRADLEY, PETITIONER

v.

LENA M. BRADLEY AND UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 586

ANNIE MAE BRADLEY, PETITIONER

v.

LENA M. BRADLEY AND UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between petitioner, the widow of a deceased officer of the Air Corps, and respondent, Lena M. Bradley, his mother, as to the distribution of the proceeds admittedly payable by the Government under a \$10,000 policy of life insurance issued to the officer under the National Service Life Insurance Act of 1940 (R. 56-57).

The suit was brought by the insured's mother against petitioner and the Government in the United States District Court for the Eastern District of Oklahoma (R. 1-11). ^{1/} The case was tried before the court, without a jury (R. 26-39), resulting in a decree awarding petitioner

^{1/} The jurisdiction of the district court rested on Section 16 of the National Service Life Insurance Act of 1940, 54 Stat. 1008, 1014, as amended July 11, 1942, c. 504, sec. 6, 56 Stat. 659 (38 U.S.C., Sec. 817).

the full amount of the insurance benefits (R. 43-44). The court held (R. 42), upon the issues made by the pleadings (R. 9-11, 14, 21-22, 24), (1) that the insured, as previously determined by the Veterans' Administration (R. 27), had effected a change of the beneficiary of the insurance from his mother to petitioner, and (2) that an agreement alleged by the mother to have been made with petitioner to divide the insurance proceeds equally between them (R. 3-7, 9), if made, was illegal and void. Under this alleged agreement, the mother sought recovery of one-half of the proceeds (R. 11). She appealed from the adverse decision of the district court (R. 45). The Government also appealed (R. 45), but challenged only the award of attorneys' fees made in the decree (R. 47). The Government contended (R. 47), as in a motion previously made by it to amend the decree (R. 44), that the award, in ordering payment of the fees in one lump sum from the payment of accrued insurance benefits, in an amount in excess of 10 per cent of that payment, contravened Section 500 of the World War Veterans' Act, 1924, as amended (38 U.S.C., Sec. 551^{2/}, which specifically provides that the amount awarded for legal fees shall be paid at a rate "not exceeding 1-10th of each . . . payment" of insurance benefits.

The Circuit Court of Appeals for the Tenth Circuit reversed the judgment of the district court, ^{3/} with directions to proceed in

^{2/} This Section was expressly made applicable to National Service Life Insurance suits by Section 16 of the National Service Life Insurance Act of 1940, as amended July 11, 1942, c. 504, sec. 6, 56 Stat. 659 (38 U.S.C., Sec. 817).

^{3/} The judgment of the circuit court of appeals was entered on May 30, 1944 (R. 68). With the court's permission (R. 69), a petition for rehearing was filed out of time on June 26, 1944 (R. 70-75). This petition was denied on July 5, 1944 (R. 78). On July 6, 1944, a "petition to reopen" the case (in order to present three allegedly pertinent new decisions) was filed (R. 79-82) without obtaining permission of the court; this petition was denied, after being considered by the court, on July 21, 1944 (R. 83). No stay of mandate was requested by petitioner. The mandate to the district court was issued by the circuit court of appeals on July 28, 1944 (R. 83). The petition for certiorari was filed on October 11, 1944, within the statutory three months from the denial of the petition to reopen but more than three months after the denial of the petition for rehearing. As correspondent points out (brief in opposition, pp. 1-3), the timeliness of this petition for certiorari is not free from doubt. Cf. Spuy Oil Co. v. Escoe, 275 U.S. 498.

accordance with the views expressed in its opinion (R. 56-68).

Judge Phillips dissented (R. 65-67) only with respect to the holding of the majority (R. 64) that the insured, in executing a "Confidential and Personal Report" for filing with this group headquarters, containing statements by him that petitioner was the beneficiary of his insurance and that the policy was in her possession (R. 8, 22), did not do so for the purpose of effectuating an intention to make petitioner the beneficiary of his insurance. It was not disputed by the dissenting judge (R. 65-67) that, as stated by the majority (R. 62), the "expressed intention of the insured to change the beneficiary, standing alone and unaccompanied by some affirmative act, having for its purpose the effectuation of his intention, is insufficient to effect a change of beneficiary"

The court below upheld the Government's contention as to error in the award of attorneys' fees (R. 64-65). It also approved the refusal of the district court to recognize or give effect to the alleged agreement to divide the proceeds of the policy, holding (R. 60) that such an agreement would constitute an assignment by the designated beneficiary for payments of benefits due or to become due under the policy, and that such an assignment was specifically prohibited by Section 3 of the Act of August 12, 1935, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (38 U.S.C., Sec. 454a), ^{4/} and made applicable to National Service Life Insurance by Section 616 of the National Service Life Insurance Act of 1940 (38 U.S.C., Sec. 816).

The question involved in the case as presented by the petition for certiorari appears to be factual. Petitioner, like the dissenting

^{4/} This Act provides, in part: "Payments of benefits due or to become due shall not be assignable,"

Judge in the court below, challenges only the holding of the court below that the insured's designation of her as the beneficiary of his policy in the "Confidential and Personal Report" was not for the purpose of effectuating his expressed intention (R. 37-39) to make her the beneficiary (Pet. 4, 6). None of the cases upon which she relies (Pet. 2, 3, 4) presents any conflict with the decision of the court below, except with respect to determination of questions of fact. But, in view of the Government's lack of pecuniary interest in the determination of this question in the instant case, it does not oppose the granting of the petition.

However, if the Court should grant the writ of certiorari in this case, we urge that it be limited, as is the petition therefor, to the question presented by the holding of the court below that there was not a change of beneficiary, since the other rulings of the court below, viz., that the alleged agreement to divide the proceeds of the policy was void and that there was error in the manner of awarding the attorneys' fees, were both clearly correct and present no questions as to which there is a conflict of decisions.

Respectfully submitted.

CHARLES FARY,
Solicitor General.

FRANCIS H. SEPA,
Assistant Attorney General.

WILBUR C. PICKETT,
Acting Director,
Bureau of War Risk Litigation.

PENDALL HARRIS,
Attorney, Department of Justice.

NOVEMBER 1944.

